

ESTTA Tracking number: **ESTTA438838**

Filing date: **11/01/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Embotelladora Aga Del Pacifico, S.A. de C.V.
Granted to Date of previous extension	11/02/2011
Address	Paseo Lomas Altas No. 4030 Col. Lomas del Valle, 45129, Zapopan, Jalisco, 45129, MEXICO
Attorney information	Michael P. Martin Fischbach, Perlstein, Lieberman & Almond LLP 1925 Century Park East, Suite 2050 Los Angeles, CA 90067 UNITED STATES mmartin@fpllaw.com Phone:3105561956

### Applicant Information

Application No	85149168	Publication date	07/05/2011
Opposition Filing Date	11/01/2011	Opposition Period Ends	11/02/2011
International Registration No.	NONE	International Registration Date	NONE
Applicant	Gonzalez, Jose Alfonso Serrano Matamoros #172, Col. Centro Atotonilco, Jalisco, 47750 MEXICO		

### Goods/Services Affected by Opposition


Class 033. All goods and services in the class are opposed, namely: Tequila
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### Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Res judicata, stare decisis, collateral estoppel. Same parties already litigated same mark and it was determined to be confusingly similar in Opposition Proceeding No. 91175952

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration	1594478	Application Date	04/07/1989
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No.			
Registration Date	05/01/1990	Foreign Priority Date	NONE
Word Mark	CABALLITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: SOFT DRINKS		

U.S. Registration No.	3896866	Application Date	04/30/2010
Registration Date	12/28/2010	Foreign Priority Date	NONE
Word Mark	CABALLITOS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 1984/09/00 First Use In Commerce: 1984/09/00 Soft drinks		

U.S. Registration No.	3320565	Application Date	10/21/2005
Registration Date	10/23/2007	Foreign Priority Date	NONE
Word Mark	CABALLITOS FRUITS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 soft drinks

Related Proceedings	91175952
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Attachments	73791924#TMSN.gif ( 1 page )( bytes ) 85026917#TMSN.jpeg ( 1 page )( bytes ) 78737754#TMSN.jpeg ( 1 page )( bytes ) NoticeOfOpposition2.pdf ( 5 pages )(187629 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michael P. Martin/
Name	Michael P. Martin
Date	11/01/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application

Serial No.: 85149168  
Mark: CABALLITO CERRERO  
Filed: October 10, 2010  
Published: July 5, 2011  
Int'l Class:33

EMBOTELLADORA AGA DEL PACIFICO,  
S.A. De C.V., a Mexican corporation,

Opposer,

v.

JOSE ALFONSO SERRANO GONZALEZ,  
believed to be a Mexican Citizen,

Applicant.

Opposition No.:

NOTICE OF OPPOSITION

Box TTAB FEE  
Assistant Commissioner of Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

Sir:

Opposer Embotelladora Aga Del Pacifico, S.A. de C.V., a Mexican Corporation, (hereinafter "Opposer") believes that it will be damaged by registration of the marks shown in the above-identified application, and hereby opposes the same in accordance with the provisions of Section 13 of the Lanham Act. (15 U.S.C. 1063) and Section 2(d) of the Lanham Act (15 U.S.C. 1052(d)).

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The grounds for opposition are as follows:

1. Opposer owns United States Trademark Registration Nos.: 1,594,478 for the mark CABALLITOS (and Horse Design) in Class 32; 3896866 for the mark CABALLITOS in Class 32; and 3320565 for CABALLITOS FRUITS in Class 32. Opposer's marks are extremely well-known in Mexico, and in the U.S., particularly among the Mexican-American population. Opposer has been using said marks since at least September, 1984 and has been using said marks in interstate commerce since at least May, 1990.

2. Opposer manufactures, sells, distributes and advertises various types of beverages and soft drinks. Opposer utilizes the above-referenced CABALLITOS marks in various combinations on its products, in sales catalogs and in advertising to identify them as originating from Opposer.

3. Opposer has developed extensive goodwill with respect to its CABALLITOS marks, individually and in composite. Opposer has expended substantial sums in the advertising and promotion of its products, and by its efforts and its considerable expenditures for promotional activities, Opposer has developed an extensive and valuable reputation for its marks.

4. By virtue of its efforts, and the expenditures of considerable sums for promotional activities as well as the excellence of the quality of its products, Opposer has gained a valuable reputation through its above-identified CABALLITOS marks.

5. Opposer's marks are inherently distinctive, have acquired substantial goodwill and secondary meaning, and are famous within the meaning of 15 U.S.C. § 1125(c)(1).

6. On October 10, 2010, Jose Alfonso Serrano Gonzalez (hereinafter "Applicant") filed an application to register the mark CABALLITO CERRERO (Stylized and Design) for: "Tequila" in International Class 33. This application was assigned Serial No. 85/149,168, and notwithstanding the fact that the identical word mark was already rejected after full disposition by the Trademark Trial and Appeal Board in Trademark Opposition No. 91175952 between the identical parties, it proceeded to publication in the Official Gazette of the United States Patent and Trademark Office on July 5, 2011.

7. Opposer is informed and believes that Applicant's proposed mark is likely to confuse Opposer's customers and potential customers, and the public generally in relation to its own marks as already determined by the TTAB.

9. Opposer is informed and believes that Applicant's use or intended use of the proposed mark began after Opposer's marks became famous and will and/or may dilute the strength of Opposer's marks by lessening the capacity of Opposer's marks to identify and distinguish Opposer's goods and services.

10. Opposer has not and does not consent in any way to Applicant's proposed use of the mark referenced herein.

WHEREFORE, Opposer respectfully requests that registration of Applicant's mark under the above identified application be refused and that this opposition be sustained.

Respectfully submitted,

Fischbach, Perlstein, Lieberman & Almond, LLP

Dated: October 31, 2011

By: 

Michael P. Martin

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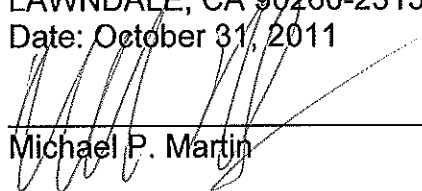
Attorneys for Opposer

Embotelladora Aga Del Pacifico, S.A. de C.V.

# CERTIFICATE OF MAILING AND SERVICE

The undersigned hereby certifies that NOTICE OF OPPOSITION is being filed electronically with the U.S. Patent & Trademark Office, Trademark Trial and Appeal Board; and a true and correct copy of this document is being served by e-mail and first class mail on attorney for Opposer on the date indicated below to:

REFUGIO JOSE GONZALEZ  
15213 CORDARY AVE  
LAWNDALE, CA 90260-2315  
Date: October 31, 2011



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Michael P. Martin